

L & M PRESTRESSING SDN. BHD.

v.

ENGINEERING CONSTRUCTION PTE. LTD.

HIGH COURT, BRUNEI
DENYS ROBERTS CJ
[CIVIL SUIT NO. 73 OF 1991]
16 OCTOBER 1991

CONTRACT: *Arbitration clause - Sub-contract - Whether clause referred to 'works' or about contract - Whether Court or arbitrator should decide dispute - Section 4(1) of the UK Arbitration Act 1950*

This appeal is from the decision of the Chief Registrar ordering that there be a stay of proceedings pending arbitration of the matters in dispute. On 11 May 1991 the plaintiff issued a statement of claim seeking B\$3,062,733.56 plus interest and costs.

The plaintiff is a construction company, incorporated in Brunei. The remaining uncompleted civil works were assigned to the plaintiff by CTP, the main contractors for phase III of the Muara Town sewerage scheme project. By letters dated 28 February 1989 and 7 March 1989 the plaintiff subcontracted the works to the defendant, subject to the terms and conditions of the agreement of 15 February 1989 between CTP and the plaintiff.

The issue before the Court was whether there should be arbitration of the claim and whether the arbitration clause referred only to disputes relating to 'works' or whether the dispute was with reference to the contract.

Held:

[1] It seems clear that both parties intended that the contract between CTP and L & M should also be the contract between L & M and the defendant, with certain exceptions which are listed. Indeed the letter of 28 February says in terms that the conditions of the CTP and L & M agreement shall apply. This includes Clause 21, the arbitration clause.

[2] Even if, which I do not accept, the defendant is bound only by clauses favourable to him. I would have been prepared to find that the clause which provides for arbitration in the event of dispute can be said to have been for the benefit of L & M. The Chief Registrar so found in his judgment and I agree with him.

[3] The object of any arbitration clause is to exchange the Courts for another forum, namely to arbitration. It does not make sense to have both a Court and an arbitrator decide disputes which arise out of the same contract.

[4] I have no doubt that the contract was for carrying out of works by the defendant and that any dispute which arose out of the contract was likely to be a 'matter related to the works'. I find as the Chief Registrar did, that the wording of the clause covers the value as well as the quantity of the works.

[The appeal should be dismissed with costs to the defendant.]

Cases referred to:

Swee Private Ltd. v. Kian Chai & Anor [1965 - 1986] 1 BLK 235

Legislation referred to:

Arbitration Act 1950 [UK], s. 4(1)

High Court Rules [Brunei], O. 69

- a* For the plaintiff - Lee Yew Choh; M/s. Clidero & Lee
For the defendant - Chin Yung Yett; M/s. Yong, Wong & Chin

JUDGMENT

Denys Roberts CJ:

- b* This appeal is from the decision of the Chief Registrar given on 22 August 1991, ordering that there be a stay of proceedings pending arbitration of the matters in dispute.

On 11 May 1991 the plaintiff issued a statement of claim seeking B\$3,062,733.56 plus interest and costs.

- c* The plaintiff is a construction company, incorporated in Brunei. The remaining uncompleted civil works were assigned to the plaintiff by CTP construction Sdn. Bhd. (CTP), the main contractors for Phase III of the Muara Town Sewerage Scheme Project.

By letter dated 28 February 1989 and 7 March 1989, the plaintiff subcontracted the works to the defendant, subject to the terms and conditions of the agreement of 15 February 1989 between **CTP and the plaintiff**.

- d* Two main arguments have been advanced by the plaintiffs, who say that there should be no arbitration of the claim because:

- (a) there was no submission to arbitration by the plaintiff and the defendant, even though there was between the plaintiff and CTP;
- (b) in any event, the arbitration clause referred only to dispute relating to 'works', whereas this dispute about the contract.

- e* **Registrar's Decision**

The Chief Registrar does not specify the source of the power on which he relied when ordering that the plaintiff's action to be stayed pending arbitration.

- f* I assume that he was relying upon s. 4(1) of the U.K. Arbitration Act 1950. In *Swee Private Ltd. v. Kian Chai & Anor.* [1965 - 1986] 1 BLK 235 it was decided that the act is one of general application, which is in force in Brunei.

Section 4(1) of that act reads:

- g* If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceeding, and that Court or a Judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

- h* **Was the Arbitration Clause Embodied**

Clause 21 of the contract between the plaintiff and CTP is in these terms:

21 Arbitration

- i* In case of any dispute of difference between CTP and L & M in any matter related to the works either shall give to the other notice in writing of such dispute or difference and such

dispute or difference shall be referred to arbitration and the decision of the arbitration appointed and agreed by CTP and L & M shall be final and binding on the parties here to. **a**

By a letter of 28 February 1989, the defendant wrote to the plaintiff, submitting a quotation all in accordance with the conditions of assignment agreement dated 15 February 1989 signed between CTP and L & M.

The letter went on, after listing exceptions to the main contract, all other clauses, conditions and scope of work favourable and applicable to L & M shall deem to be applicable to us in every respect and contents. **b**

The plaintiff wrote the defendant on 7 March 1989 confirming acceptance of the offer.

Effect of Letters

It seems clear that both parties intended that the contract between CTP and L & M should also be the contract between L & M and the defendant, with certain exceptions with are listed. Indeed, the letter of 28 February says, in terms, that the conditions of the CTP and L & M agreement shall apply. This includes Clause 21, the arbitration clause. **c**

In a subsequent paragraph, the defendant says that he is bound by all other clauses conditions and scope of work favourable and applicable to L & M. If read literally, this would render the contract unworkable, since there are various conditions in the head agreement by which the defendant is obviously bound, and intended to be bound, though it is unlikely that they would be properly said to be for its benefit. The letter of 28 February would make much more sense if the words 'favourable and' were deleted from the second paragraph. **d**

Even if, which I do not accept, the defendant is bound only by clauses favourable to him. I would have been prepared to find that the clause which provides for arbitration in the event of dispute can be said to have been for the benefit of L & M. The Chief Registrar, so found in his judgment and I agree with him. **e**

Works

The plaintiff argues that the only dispute and differences with have to be submitted to arbitration are those which are 'in any matter related to the works'. He says that the statement of claim deals only with the terms of the contract, not with any difference as to works. **f**

The object of any arbitration clause is to exchange the Courts for another form, namely to arbitration. It does not make sense to have both a Court and an arbitration decide dispute which arise out of the same contract.

The statement of claim itself states that the defendants 'ceased all work as from the afore mentioned date' so that the plaintiffs were obliged to complete the work themselves. The particulars, even though difference words are used in some places, specify the value of the work done by the defendants and of the work done by the plaintiffs. **g**

I have no doubt that the contract was for the carrying out of works by the defendant and that any dispute which arose out of the contact was likely to be 'a matter related to the works'. I find, as the Chief Registrar did, that the wording of the clause covers the value as well as the quantity of the works. **h**

The appeal should be dismissed with costs to the defendant. The costs should be taxed if not agreed.

I dealt also with a summons in chambers No. 329 of 1991. In this summons the plaintiff asked the Court to direct that the arbitration should take a specified form and be conducted in a certain manner. **i**

- a* The way in which an arbitration is carried out is, in general, left to the parties to decide. The Court will not interfere, unless the parties agree, or the Arbitration Act or the arbitration agreement so provide, or the Brunei High Court Rules O. 69 give the necessary power.

I dismissed this summons and made no order as to costs.

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Also found at [1992] 2 CLJ 928

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